



U.S. Senate Committee on Appropriations

PRESS RELEASE

September 29, 2004

Press Contacts: Melanie Alvord
(202) 224-0992

FOR IMMEDIATE RELEASE

Courtney Schikora (202) 224-1028

Senator Stevens' Remarks on the National Intelligence Reform Act of 2004

Senator Stevens today spoke on the Senate floor regarding the 9/11 Commission's reform recommendations and the National Intelligence Reform Act of 2004, S. 2845, currently being debated on the Senate floor.

Following are his remarks:

I have read and reread the 9/11 Commission Report. Last week the Appropriations Committee held hearings on the Report's recommendations. We heard from Dr. Henry Kissinger and three former military commanders-in-chief: General Joe Ralston, United States Air Force (retired) and former Commander of the U.S. European Command and Supreme Allied Commander of Europe and NATO; Admiral Dennis Blair, United States Navy (retired) and former Commander, U.S. Pacific Command; and Admiral James Ellis, Jr. (retired) former Commander of the U.S. Strategic Command. The Committee also heard testimony from Dr. John Hamre, President and CEO of the Center for Strategic and International Studies and former Under Secretary of Defense; Judge Richard Posner of the Court of Appeals for the Seventh Circuit; and Dale Watson, former Executive Assistant Director of Counterterrorism and Counterintelligence for the FBI.

Our committee spent two days listening to testimony on the 9/11 Commission's recommendations. Each witness we spoke with was an expert in their field with years of dedicated service to the nation. After listening to their thoughts and suggestions, I believe we have only begun to scratch the surface of what needs to be considered.

Since the passage of the National Security Act of 1947, at least 19 commissions, committees and panels have made recommendations aimed at reorganizing our nation's intelligence community. Those proposals have led to changes in internal agency direction, presidential directives, and statutes. But none of those reports were adopted in their entirety or in this type of a timeframe and context.

During last week's hearings, Senator Inouye asked whether it would be wise for Congress to make a decision about restructuring the intelligence community in the next

two weeks. Judge Posner, who recently authored a very thoughtful article on intelligence reform in *The New York Times*, testified that he thought it would be unwise and “most unfortunate.” He expressed doubts that the “analytical problems” could be resolved in that timeframe and expressed concerns that the Presidential campaign is not the right setting for these decisions. I agree with Judge Posner. However, I approached this legislation with an open mind and am hopeful that the Senate will move forward on some reforms.

I do have concerns about the current efforts to restructure our nation’s intelligence community. For starters, the witnesses I heard last week revealed serious issues with the underlying document for these efforts: the 9/11 Commission Report. I believe the commission’s recommendations do not reflect their own account of what happened on 9/11. As Judge Posner said before our committee:

“The first 338 pages of the commission’s report are an extremely detailed and thorough narrative of the background to the attacks, the attacks themselves, and the immediate response. It is a very fine job... Then after that, the commission goes off on what is really a different tangent in considering organizational change because it is not clear, from reading their narrative, that the problems were organization problems for which organization solutions or reorganization would be indicated. So I think there is a mismatch between this very detailed narrative and a rather more summary discussion of organizational change that really does not match the problems that the report itself had identified.”

Because the commission’s recommendations are somewhat divorced from its account of what happened on 9/11, the commission adopts – in my view – a flawed vantage point from which to suggest reforms.

For example, one of the concerns that Judge Posner expressed in our hearings last week was that the report:

“... really is oriented toward preventing not new threats, but a repetition of 9/11. Now, an exact repetition of 9/11 is extremely unlikely because that has already happened. We know about that. What I think we have to worry [more] about [is the threat of] biological terrorism, nuclear terrorism, agricultural terrorism because, you know, destruction of agriculture by biological weapons could be as destructive as biological warfare against people. So we ought to try to think about the disasters that have not happened, but that is very difficult to do, so we tend to think about what has already happened.”

As we debate this legislation, one of the things we must keep in mind is that there have been substantial changes in our intelligence-gathering methods and operations since 9/11. The situation we faced on the morning of 9/11 is not the situation we face today. And the threats – although related – are not identical. Efforts to reorganize the intelligence community must take into account the current state of operations and the broad scope of the risks we face. We cannot be mesmerized by one threat.

I am not opposed to intelligence reform on its face, but any changes should reflect the current context. Since 9/11 many members of the intelligence community have testified before Senate committees and told us that they are doing things differently, that today there is a free-flow of ideas that did not exist before 9/11. Congress should not take any action that might – intentionally or unintentionally – stifle that progress.

I support many aspects of this legislation. I am in favor of the creation of a National Intelligence Director who can serve as the President's primary intelligence advisor. I also support the creation of a National Counterterrorism Center.

However, I am concerned about the way the NID's role is defined in this legislation.

For example, this legislation gives the NID authority to set security, personnel and information technology standards across the intelligence community, which would include areas of defense not normally under their purview, to enable better information-sharing. This effort may create more problems than it solves. Judge Posner addressed this in the article he recently published in *The New York Times*. He said:

"The commission thinks the reason the bits of information that might have been assembled into a mosaic spelling 9/11 never came together in one place is that no one person was in charge of intelligence. That is not the reason. The reason, or rather, the reasons are, first, that the volume of information is so vast that even with the continued rapid advances in data processing it cannot be collected, stored, retrieved and analyzed in a single database or even network of linked databases. Second, legitimate security concerns limit the degree to which confidential information can safely be shared, especially given the ever-present threat of moles like the infamous Aldrich Ames. And third, the different intelligence services and the subunits of each service tend, because information is power, to hoard it. Efforts to centralize the intelligence function are likely to lengthen the time it takes for intelligence and analyses to reach the President, reduce diversity and competition in the gathering and analysis of intelligence data, limit the number of threats given serious consideration and deprive the president of a range of alternative interpretations of ambiguous and incomplete data – and intelligence data will usually be ambiguous and incomplete."

Giving the NID information-sharing authority may actually prove counterproductive. The implications Judge Posner raises need full debate and discussion. At the very least, we cannot assume that Congress has rectified this problem simply by vesting information-sharing authority in one individual.

I am also concerned about the language in this legislation concerning the structure of the Office of the NID. We don't need to create a new bureaucracy here and it seems to me that this legislation is at risk of doing just that. We need to delete or significantly revise the parts of this bill that delve into unnecessary or excessive detail about the organization of the Office of the NID.

I note that the Statement of Administration Policy dated September 28, 2004, specifically addressed this issue of creating a “*cumbersome new bureaucracy*”.... “*Legislated mandated bureaucracy will hinder, not help, in the effort to strengthen U.S. intelligence capabilities and to preserve our constitutional rights.*” And I continue to quote, “*The Administration urges the Senate to delete or significantly revise these problematic provisions.*”

We also must take time to carefully consider the people in the field and how this legislation will impact them. There are 175,000 persons working in the intelligence community, 150,000 of which are military personnel. They are all doing an incredible job with much personal sacrifice—many under difficult circumstances and away from their families. The creation of the NID will have serious consequences for them and the Department of Defense intelligence personnel must be carefully considered in any reforms.

One can’t alter one piece of this puzzle without having an impact somewhere else. I am concerned not only with the impact this legislation will have in terms of unintended consequences in the “big picture,” but also with the impact it will have on our career intelligence operatives who are working out in the field.

This legislation says the NID will “establish intelligence collection and analysis requirements for the intelligence community.” This arrangement would centralize the prioritization and control of intelligence and could be detrimental for military leaders outside Washington, DC. The NID would inevitably focus on the current crisis in Washington, possibly short-changing the long-term collection and analysis needed for intelligence preparation of battlefields in distant regions. When combat occurs, intelligence could swing into full force to support the troops, but by then it would be too late. We need a consistent peacetime intelligence effort to ensure that we can either avoid conflict or give U.S. forces high-quality information when they must engage an enemy.

Finally, I am concerned about the nature of the NID position. Right now we have one agency that deals with domestic threats and another that deals with foreign threats. There are reasons for this division; domestic and international threats are distinct and require different intelligence tactics and strategies. The NID collapses international and domestic intelligence concerns into one position. I do not want to see the kind of situation Judge Posner warned about last week where we have an intelligence community that is “too rough on our citizens” or “too gentle” with foreign threats because it needs to adhere to uniform policies across domestic and international contexts.

I believe that the NID position should reflect what Dale Watson recommended to our committee last week:

“This position must be a job and not a position. The individual that has this responsibility of being the NID needs to work within the NID and within the intelligence community. The NID should not be a public relations job. The NID

should not be on the speaking circuit or conducting liaison. The NID should be a central-focused individual that looks at where [we] are across the board in all areas.... I think the NID is a term appointment. I think the NID has to have the responsibility and be able to the task."

Congress should not rush to implement the recommendations put forth by the 9/11 Commission. For my part, I plan to spend more time in this chamber listening to my colleagues and their views on this legislation.

As of now, I am inclined to support a course that creates a National Intelligence Director and the National Counterterrorism Center, gives them six months to get up and running, and then invites them to come and tell those of us in Congress what additional authorities and changes they need.

Stevens then raised a series of questions that he has regarding S. 2845 and which he hopes will be addressed during debate on the bill, they are:

- Based on the fact that there is no differentiation between civilian and military personnel in your bill, could the NID have the power to hold military personnel for more than their stated rotations, for example, at the National Counter Terrorism Center?
- If this is true, could this have an effect on their ability for promotion?
- If needed for a military mission, how would the Secretary of Defense or one of the Services be able to have that military individual return to a non-National Intelligence Program position?
- Also, based on the educational requirements designated for personnel in the National Intelligence Program by the National Intelligence Director, how would this be reconciled for those military personnel who must also complete military education courses for advancement of their careers?
- How much control would DoD have over military personnel assigned to the NID? Would the NID control their assignments and careers? How would the NID ensure that they have the requisite training and assignments to remain competitive for promotion within their parent military service? What role would the Secretary of Defense have in meeting statutory responsibilities in Title 10 and Title 5 for armed forces personnel?
- I have heard comments that this new National Intelligence Director organization could be in excess of 800 people. If that is true, it would seem that this legislation does create a new bureaucracy to deal with intelligence.
 - How large will the National Intelligence Director organization will be?
 - Where would the personnel for such a structure come from?

- Approximately how many military personnel would be in the National Intelligence Director organization?
- Why have does this legislation single out the FBI for the NID's ability to fix the rate of pay? Why doesn't it extend this to all personnel involved?
- The number of qualified personnel in the intelligence field is fairly limited. Will the creation of the National Intelligence Director and this organization dilute the numbers and how long will it take to grow the additional numbers if they are required in order to create this organization?
- If national intelligence assets are transferred to a new National Intelligence Director, how do we ensure to our military commanders that national assets will be reliably available to them in the event of a conflict?
- How will the Department of Defense relate to the Defense Support Agencies, such as the National Reconnaissance Agency or NRO, National Security Agency or NSA, and the National Geospatial Agency or NGA, if they are effectively under the national intelligence agency? Will they still be combat support agencies? Will they be converted to civilian organizations staffed with civilian personnel?
- Within this bill, how have you altered the definition of Joint Military Intelligence Programs?
- Am I correct in understanding that the NID controls the budget of the NSA, NGA and NRO and that the NID recommends nominees to be Directors, with the concurrence of the Secretary of Defense? These agencies along with DIA are both national and combat support agencies. How will the proposed bill ensure that these agencies remain responsive to the military forces they support if their funding and personnel are controlled by another department?
- How do the National Security Advisory and the Office of Management and Budget fit into the overall role of coordination or budget coordination envisioned by this legislation?
- How would a National Intelligence Director with strong budgetary and personnel authority and the ability to control the dollars, 85 percent of which now are controlled by the Department of Defense, still maintain an appropriate line with defense?
- This bill provides the National Intelligence Director with the power to reach into other department to manage personnel, budget and acquisition programs. How do divided lines of authority work on a day-to-day basis? The formulation of divided command authority envisioned in the bill is an invitation for turmoil and could cause serious operational problems.

- How do the benefits of centralization of the intelligence function impact the benefits of diversity and competition in the production of useful intelligence?
- Is it possible to link the National Intelligence Director to the National Security Counsel and place it under the control of the National Security Advisor?
- Currently, national intelligence priorities are established by the President and the National Security Council. Does a National Intelligence Director with such powers weaken the NSC process and the roles of the National Security Adviser and the Secretary of State?
- Could some of the objectives sought by reorganization be achieved by strengthening the existing institutions, especially the position of the DCI?
- Should we consider strengthening existing legislation that creates the Central Intelligence Agency?
- Does this legislation create a system in which intelligence is reported to two masters? For example, would members of the intelligence community be under the control of both the National Intelligence Director and their own agency bosses. If so, how would this work in day-to-day operations?
- Will the system envisioned by this legislation create conflicts in collection and analysis tasking?
- The 9/11 Commission Report highlighted that there was a lack of information-sharing within the intelligence community. But evidence points out that this was just as serious within agencies as it was across agencies. How can problems of sharing within agencies be solved by layering another set of controls over the agencies?
- Would the National Intelligence Director's role in crafting intelligence policy supplant that of other Cabinet Secretaries? Would the other Cabinets lose their own organic capability to do intelligence analysis? If so, would this undercut Cabinet secretaries who are constitutional officers of the government charged with managing the instruments of foreign and security policy for the country?
- How would these same Cabinet Secretaries fulfill the constitutional authority vested in them by Congress without their own independent judgments?
- Could the National Intelligence Director function without having the analytic branch of the CIA placed under his or her direction? And if he doesn't do that, will we have duplicate analytical branches?

- If the essential relationship between analysts and operators is weakened, does the operational branch become rudderless and the analytical branch too academic? Would the CIA become an organization for conducting clandestine activities only?
- Creating an intelligence czar with domestic surveillance authority that is not under the Attorney General, and measures that separate domestic intelligence from law enforcement, go against all the lessons that democratic governments have learned the hard way. What are the concerns and dangers of merging domestic and foreign counterterrorism operations under one organization?
- How will competing views on intelligence be brought to the President's attention? Indeed, how will competing views emerge in a structure that is so centralized?
- Much of the bill which stems from the recommendations of the 9/11 Commission Recommendations seem to over-emphasize the threat of Islamic terrorism. Does this legislation also enable us to better deal with the growing world-wide threats of proliferation of weapons of mass destruction?
- How much can congressional oversight be reduced while still maintaining an element of competition, both within the intelligence community and within the different perspectives in the Congress?
- We created the Department of Homeland Security in the midst of an election cycle. Most experts would say that transition has not been successful and that the current organization falls short of its goals. That is the same environment that we face now. How can we avoid some of the same mistakes we have experienced with the Department on Homeland Security in this legislation?
- Would the National Counterterrorism Center be involved in operations? Why would there be a Director of Operations in this organization? Couldn't that complicate planning for operations that currently go on within the Department of Defense, CIA, FBI and other agencies?
- It is my understanding that the Inspector General of the National Intelligence Authority would have the authority to conduct investigations of the relationships among elements of the Intelligence Community within the National Intelligence Program, and also the authority to investigate relationships among elements of the Intelligence Community within the National Intelligence Program and other elements of the Intelligence Community. This exceeds the authorities granted to other Inspectors General in the Intelligence Community by far. What qualifies an Inspector General to audit inter-agency processes in addition to the programs and operations within the National Intelligence Authority?
- Does the authority to investigate inter-agency processes create a tension between the Inspector General of the National Intelligence Authority and the Inspectors General of other agencies in the Intelligence Community?

- The bill also authorizes the Inspector General of the National Intelligence Authority to provide policy direction to improve the effectiveness of the inter-agency process without consulting and coordinating any such policy guidance with the department heads of the agencies affected. Why aren't the department heads included in setting guidelines and making recommendations to improve the inter-agency process?
- Doesn't the authority to provide policy guidance politicize the position of Inspector General, and subsequently endanger the IG's independence, which is critical to conducting fair and unbiased audits and investigations?

###